

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

AISHA RILEY, on behalf of herself  
and all others similarly situated,  
Plaintiff,

**VS.**

HOUSTON NORTHWEST OPERATING COMPANY, L.L.C., a Texas Limited Liability Company d/b/a “HCA Houston Healthcare Northwest” and “Houston Northwest Medical Center”; and GULF COAST DIVISION, INC., a Texas Corporation, d/b/a “HCA Houston Healthcare,”  
Defendants.

[illegible]

CIVIL ACTION 4:19-cv-02496

## PLAINTIFF'S NOTICE OF DISMISSAL

Plaintiff Aisha Riley files this Notice of Dismissal of her suit without prejudice, and would respectfully show the Court the following:

Plaintiff filed the current lawsuit on July 10, 2019 [Docket Entry No. 1]. Defendants have filed no answer or motion for summary judgment. After Plaintiff amended her pleadings, Defendants filed a Motion to Dismiss Plaintiff's Second Amended Complaint on November 11, 2019 propounding several arguments under Fed. R. Civ. P. 12(b)(1) [Docket Entry No. 19]. The Court granted the motion in part and denied it in part by order dated June 11, 2020 [Docket Entry No. 37].

In the Court's Memorandum Opinion and Order on Defendants' Motion to Dismiss, the Court, sua sponte, raised the issue of whether it had subject-matter jurisdiction on diversity grounds in this action under the Class Action Fairness Act (CAFA), a matter that neither Plaintiff nor Defendants raised in any of their pleadings prior to the Court's order. Specifically, the Court ordered Plaintiff to file an Amended Motion for Class Certification requiring such motion "to address the court's subject-matter jurisdiction."

While Plaintiff believes that while the Court may have subject matter jurisdiction under CAFA in this case, Plaintiff recognizes that the Court has raised the abstention doctrine sua sponte as an exception to

CAFA jurisdiction based on the home state exception to the CAFA. See *Adams v. West Marine Prods., Inc.*, 958 F.3d 1216, 1223 (9<sup>th</sup> Cir. 2020).

Although Plaintiff has conducted written discovery in this case, she does not possess adequate information about the identity of the citizenship of Defendants' patients because of Defendants' objections to the discovery and their indication that they would seek a stay of discovery pending the Court's ruling on their Motion to Dismiss. Nevertheless, upon further examination of the Court's question regarding subject matter jurisdiction, Plaintiff believes that at least two-thirds of emergency room patients at Defendants' hospitals must necessarily be citizens of the State of Texas and that only a minority of patients are likely to be citizens of other states who experienced a need for emergency room medical treatment during their stay in Texas.

Because the home state exception is almost certain to apply, and the Court has raised this issue sua sponte, Plaintiff files this Notice of Dismissal pursuant to Fed. R. Civ. P. 41(a)(1) without prejudice to the refiling the suit to enable Plaintiff to refile the action in a Texas state court. Because no class has been certified in this action, Fed. R. Civ. P. 23(e) does not apply. Further, because Defendants have filed no answer or motion for summary judgment, this notice is self-effectuating. *HIS Company, Inc. v. Stover*, No. 4:15-CV-00842, 2016 WL 6134939 (S.D. Tex. Sept. 9, 2016).

WHEREFORE, Plaintiff prays that the court clerk enter a docket entry showing that the current matter be dismissed without prejudice.

BLUMBERG BAGLEY PLLC

by: /s/ Peter F. Bagley  
Daniel E. Blumberg  
Texas Bar No. 02512985  
[daniel@blumbergbagley.com](mailto:daniel@blumbergbagley.com)  
Peter F. Bagley  
Texas Bar No. 00783581  
[peter@blumbergbagley.com](mailto:peter@blumbergbagley.com)  
2304 West Interstate 20, Suite 190  
Arlington, Texas 76017  
(817) 277-1500  
Facsimile (817) 277-1170

LAW OFFICE OF BARRY KRAMER

By: /s/ Barry L. Kramer  
Barry L. Kramer  
[kramerlaw@aol.com](mailto:kramerlaw@aol.com)  
9550 S. Eastern Avenue, Suite 253  
Las Vegas, NV 89123  
(702) 778-6090

ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing pleading was forwarded to the all parties through their attorneys of record by dispatch to the following in accordance with the Federal Rules of Civil Procedure on July 2, 2020:

William M. Katz, Jr.  
Catherine C. Rowsey  
THOMPSON & KNIGHT LLP  
1722 Routh Street, Ste. 1500  
Dallas, Texas 75201

/s/ Peter F. Bagley  
Peter F. Bagley